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2019 IL App (3d) 180720-U

Order filed April 23, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

In re J.P.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-18-0720
	)	Circuit No. 15-JA-329
v.	)	
	)	
Tonya H.,	)	
	)	The Honorable
Respondent-Appellant).	)	Mark E. Gilles,
	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Schmidt and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err when it found the respondent-mother to be an unfit parent during termination proceedings.

¶ 2 The circuit court entered orders finding the respondent, Tonya H., to be an unfit parent and terminating her parental rights to the minor, J.P. On appeal, the respondent argues that the circuit court erred when it found her to be an unfit parent. We affirm.

¶ 3 FACTS

¶ 4 On December 16, 2015, a juvenile petition was filed alleging that J.P., a boy who was 8 months old at the time of removal, was neglected by reason of an injurious environment. As later amended, the petition specifically alleged that: (1) the respondent had been using a man she knew to be schizophrenic to care for the minor; (2) the caretaker was an inappropriate caregiver; (3) the respondent's utilities had been turned off and she allowed the caretaker to bathe the minor; (4) the minor was placed on a safety plan on November 17, 2015, and by December 9, 2015, the respondent had not visited with nor provided financial support for the minor, and she had explained that she was focusing on trying to regain custody of the minor's sibling; (5) the respondent was in a paramour relationship with the minor's father, who had a lengthy criminal history and had been physically violent toward the respondent; and (6) these incidents of domestic violence included the father choking the respondent, banging her head on a bed frame, punching her in the face on multiple occasions, threatening to burn her with coffee, grabbing her hair and knocking off her glasses, pinning her against a wall, kicking her in the buttocks, hitting her in the leg with a bat, and threatening to punch her stomach while she was pregnant. Nothing in the record documents any physical abuse of the child. On July 19, 2016, an agreed order was entered finding the minor neglected.

¶ 5 On September 7, 2016, after a dispositional hearing, the circuit court made the minor a ward of the court, found the respondent to be an unfit parent, and named the Department of Children and Family Services (DCFS) as guardian with the right to place. The court also ordered

the respondent to complete the following tasks: (1) execute all authorizations for releases of information requested by DCFS or its designee; (2) fully cooperate with DCFS or its designee; (3) complete a psychological examination and comply with any associated recommendations; (4) participate in and complete domestic violence counseling and individual counseling; (5) participate in and complete a parenting course/classes; (6) participate in and complete a domestic violence course/classes; (7) obtain and maintain stable housing; (8) provide the caseworker with changes in addresses, phone numbers, and household members within three days; (9) provide information to the caseworker on any individuals that DCFS or its designee believes to have a current or potential relationship that could affect the minor; and (10) attend visits with the minor.

¶ 6 Several documents were filed with the court relating to the respondent's progress on her tasks during the relevant nine-month period (April 24, 2017 to January 24, 2018). On May 23, 2017, the respondent attended a domestic violence evaluation, after which the evaluator concluded:

> "She was a poor historian and quite defensive during the interview. *** [She] was administered the ME-SA anger assessment for anger pathology and did not respond to any of the questions. She denied anger issues when questioned about this. An accurate assessment cannot be done at this time due to the lack of corroborating information and the client's resistiveness and lack of compliance."

The respondent was nevertheless referred for eight weeks of anger management treatment, to be followed by a minimum of 10 weeks of domestic violence treatment.

¶ 7 On May 4, 2017, Dr. Joel Eckert conducted a psychological evaluation of the respondent. Dr. Eckert diagnosed the respondent with, *inter alia*, borderline intellectual functioning, intermittent explosive disorder, and other specified personality disorder, the last of which included avoidant, dependent, histrionic, and narcissistic features. Dr. Eckert also expressed concerns over the respondent's ability to parent in a marginally safe and competent manner and her potential for angry outbursts. He also questioned whether she would adequately dedicate herself to counseling.

¶ 8 A permanency review hearing report compiled on December 6, 2017, stated the following regarding the respondent's progress toward completion of her tasks. She had signed all necessary releases of information, but she had been very difficult to work with during the reporting period. The respondent often interacted with the caseworker aggressively and disrespectfully, had lied about her relationship with the minor's father and had hidden her pregnancy, and had threatened to punch the caseworker.

¶ 9 She had completed a psychological evaluation and had participated in individual counseling, but had been discharged from it (in May 2017, according to other records) because she told her therapist she was moving. The respondent had been referred for counseling on August 16, 2017, and had an initial counseling session on September 20, 2017. At the request of the therapist, the caseworker attended a counseling session in November 2017, during which the respondent said she had lied about not having a relationship with the minor's father and that she had been living with him.

¶ 10 The respondent had completed a parenting class, but there was no documentation of when it had been completed.

¶ 11 She had started domestic violence classes on October 17, 2017, but had not been able to apply what she had learned, as evidenced by her continued relationship with the minor's father.

¶ 12 The respondent had been living at a residence in Peoria, but the caseworker had not been to the house to visit. On October 3, 2017, the respondent had told the caseworker she could not see the house until the respondent was ready (the respondent had stated "she would not provide the name of the man she was residing with until she had spoken to him"). On November 15, 2017, the respondent told the caseworker that she could come to see the house, but as of the time of the report (December 6), the caseworker had not scheduled a home visit.

¶ 13 Regarding visitation, the respondent had attended 9 of 19 visits during the period covered by the permanency review haring report. The report also stated:

> "When [the respondent] visits she usually brings [the minor] food to snack on and something to drink. She often spends a lot of her time holding [her daughter], and [the minor] is playing by himself. [The respondent] often speaks about her dislikes with the foster parents, and has to be told not to discuss things in front of the children. She likes to complain to the worker that supervises the visits and has been told that this is not what she is here for at that moment."

¶ 14 The report concluded that the respondent had not made progress toward the completion of her tasks.

¶ 15 On March 15, 2018, the State filed a petition for termination of the respondent's parental rights to the minor. The petition alleged that the respondent failed to make reasonable progress

toward the return of the minor to her care during the nine-month period from April 24, 2017, to January 24, 2018.

¶ 16 On August 29, 2018, the circuit court held a hearing on the termination petition. Dawnelle Cooper testified that she was a caseworker with the Center for Youth and Family Solutions and was assigned to the minor's case. Cooper testified that at the beginning of the relevant nine-month period, the respondent was living in Kewanee and was there until August 2017 when she moved to Peoria. The respondent did not inform Cooper of the change of address until September 2017. Cooper requested information about anyone living with the respondent, but the respondent declined to give any information, claiming that she wanted to ask the person she was living with before giving any information. Cooper stated that she did not see the respondent's Peoria residence: "I could never get a home visit scheduled with her. She would never get it scheduled, and then she moved residences and wanted to get it cleaned up and then would let me know when I could come over." During the relevant nine-month period, Cooper did not see any residence in which the respondent was living.

¶ 17 Regarding visits, Cooper testified that the respondent attended five of seven visits scheduled during April and May 2017. Between June 2017 and January 2018, the respondent attended 9 of 19 visits.

¶ 18 Cooper also testified that the respondent's relationship with the minor's father predated the relevant nine-month period but continued into it, which was a concern due to the history of domestic violence. Cooper stated that at the beginning of the nine-month period, she thought that the relationship was over. However, in November 2017, the respondent informed Cooper that she and the minor's father had been lying to the court about the relationship and they had been living together. Additionally, Cooper stated that the respondent gave birth to a girl in

August 2017. The father was the minor's father and the respondent never told the caseworker that she was pregnant.

¶ 19 On cross-examination, Cooper stated that the respondent had completed an "anger management domestic violence evaluation" on May 23, 2017. She also completed a psychological examination on May 4, 2017. Additionally, while the respondent provided Cooper with a new address in September 2017, she refused to allow Cooper to see the home and did not provide information on the other people living in the home. After a court hearing on November 15, 2017, the respondent told Cooper that she could do a home visit, but Cooper did not know off the top of her head when she attempted to make that home visit.

¶ 20 Polly Marian, an administrative assistant with the Center for Youth and Family Solutions, testified to an incident that occurred in the office on August 30, 2017. The respondent came into the office "very aggravated and angry." Marian asked the respondent if she wanted to see her caseworker. The respondent said no and that she "would probably end up going to jail if she seen [*sic*] her." Marian did not let the respondent into the main area of the building and went to get the supervisor Dena Krigbaum.

¶ 21 Krigbaum testified that the respondent was agitated, talked about a visit in July, and requested a new caseworker. The respondent said that if she saw the caseworker, she would punch her in the face. Krigbaum told the respondent that she was calling the police to report the threat and asked her to leave. The respondent left.

¶ 22 The respondent testified that she had lived in Kewanee from April 24, 2017, until November 2017, when she moved to Peoria. She told Cooper that she could come see the house, and that invitation remained open until the end of the relevant nine-month period. She claimed that she was not living with the minor's father between November 2017 and January 2018; her

statement to the contrary to her therapist and Cooper in November 2017 that she was living with him was a lie. Toward the end of December 2017, she drove with the minor's father to Mississippi so she could visit the minor's paternal aunt, but she claimed she was not in a relationship with him at the time. She did not sleep in the same location as him in Mississippi. She obtained a job at a gas station in the Peoria area in early January 2018 and held that job through the end of the relevant nine-month period. She completed a domestic violence class during the relevant nine-month period and she attended visits with the minor. Transportation and medical issues caused her to miss visits. She said she lacked money and bus passes to get to the visits and that three or four misses occurred before she asked Cooper for bus passes.

¶ 23 Regarding the August 30, 2017, incident at the Center for Youth and Family Solutions, the respondent admitted that she was aggravated and angry, which she attributed to her daughter being taken from her and placed with her sister. She admitted threatening to punch Cooper.

¶ 24 The respondent stated that she did not hide her pregnancy during the relevant nine-month period. She said she "told my caseworker, John Flat, in Rock Island at [the Center for Youth and Family Solutions]." She admitted that she did not tell Cooper about the pregnancy.

¶ 25 The respondent stated that she had attended individual counseling between April 24, 2017, and August 30, 2017, which included anger management counseling.

¶ 26 At the close of the hearing, the circuit court found that the State had proven by clear and convincing evidence that the respondent was an unfit parent, and the case was scheduled for a best interest hearing.

¶ 27 On October 31, 2018, the circuit court held a best interest hearing at the conclusion of which it found that it was in the best interest of the minor to terminate the respondent's parental rights.

¶ 28 The respondent appealed.

¶ 29 ANALYSIS

¶ 30 On appeal, the respondent's sole argument is that the circuit court erred when it found that she failed to make reasonable progress toward the return of the minor to her care during the nine-month period from April 24, 2017, to January 24, 2018.

¶ 31 In relevant part, section 1(D)(m) of the Adoption Act provides that an "unfit person" includes a parent who fails to make reasonable progress toward the return of the minor to the parent's care during any nine-month period following the adjudication of the minor as neglected or abused. 750 ILCS 50/1(D)(m) (West 2016).

> "Reasonable progress is examined under an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the parent. [Citation.] The benchmark for measuring a parent's reasonable progress under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and court's directives in light of the condition that gave rise to the removal of the child and other conditions which later become known that would prevent the court from returning custody of the child to the parent. [Citation.] Reasonable progress exists when the trial court can conclude that progress being made by a parent to comply with directives given for the return of the minor is sufficiently demonstrable and of such a quality that the trial court will be able to order the minor returned to parental custody in the near future. [Citations.] Failure to make

> reasonable progress toward the return of the minor includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care. [Citations.] *In re D.T.*, 2017 IL App (3d) 170120, ¶ 17.

¶ 32 At a hearing on a termination of parental rights petition, the State must prove by clear and convincing evidence that a parent is unfit. 705 ILCS 405/2-29(2) (West 2016). On review, we will not reverse a circuit court's unfitness determination unless it is against the manifest weight of the evidence, which means that the opposite conclusion is clearly apparent. *In re M.I.*, 2016 IL 120232, ¶ 21.

¶ 33 Our review of the record reveals that the circuit court's unfitness determination was not against the manifest weight of the evidence. In large part, the minor was removed from the respondent's care due to her relationship with the minor's father, in which there was a history of domestic violence. During the relevant nine-month period, the respondent admitted to her therapist and the caseworker that she had lied about no longer being in a relationship with the minor's father; in fact, she had been living with him. While the respondent had been attending domestic violence classes, it was readily apparent that she had not applied what she had learned in those classes. Further, she threatened to punch the caseworker and was not as cooperative with her or the agency as was required by the circuit court. Furthermore, she attended just 14 of 26 visits with the minor during the relevant nine-month period and apparently displayed questionable behavior during the visits she attended. Under these circumstances, we hold that the circuit court did not err when it found the respondent failed to make reasonable progress toward the return of the minor to her care during the relevant nine-month period and that she remained unfit to parent this child.

¶ 34 Although the respondent does not challenge the circuit court's best interest finding, we do note that J.P. was initially placed with respondent's adopted sister, but that proved unsuitable. In November 2017 he was moved to the care of respondent's biological sister and her husband, who have expressed an interest in adopting him.. He shares that placement with his two siblings and is apparently doing well. Accordingly, we hold that the court did not err when it terminated the respondent's parental rights.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Peoria County is affirmed.

¶ 37 Affirmed.